

**REMARKS**

This Amendment is in response to the Office Action mailed January 11, 2006. Claims 1-38 are pending and have been rejected by the Office Action. By this Amendment, claim 24 has been amended. Favorable action is requested in view of the remarks below.

Claims 24-26 have been rejected under 35 U.S.C. §112 ¶2 as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter [of] the invention. Applicants have amended claim 24 to add the recitation “orthogonal to the axis of the center joint.” Support for this amendment can be found, for example, in Figs. 28-31 and on p. 17, lines 3-4 of the application. Claims 25 and 26 incorporate the added recitation by virtue of depending from claim 24.

Claims 1-10, 12, 15-25 and 27-32 have been rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Pat. No. 5,853,422 issued to Huebsch et al. (the “Huebsch” patent). The Huebsch patent is entitled “Apparatus and method for closing a septal defect” and discloses a catheter delivered device to close a septal defect.

The Examiner considers the Huebsch patent to disclose, in Fig. 3, that “an anchor member (22), [] wherein the anchor member of at least one of said first and second sides comprises a generally cylindrical member (12).” See Office Action dated January 11, 2006, page 3. The disclosure of the Huebsch patent does not meet the limitation recited in the independent claim 1 in that the Huebsch patent does not disclose an anchor member “comprising a generally cylindrical member” as recited in claim 1. The “cylindrical shaft 12” of the Huebsch patent refers to almost the entire device as configured in the delivery catheter and not to an anchor member. The anchor member in the Huebsch patent is formed of “struts 22” radially emanating from the axis of the device (see Figs. 2-4, 5a and Col. 4, lines 20-24 and 38-43 of the Huebsch patent). Accordingly, claim 1 is allowable over the Huebsch patent. Further, the Examiner has identified no suggestion in the Huebsch patent to modify the disclosure to meet the claim limitation. Claims 2-10, 12 and 15-19 are allowable at least because they depend from claim 1 and the novel features recited.

Independent claim 20 recites that “wherein each of said first and second sides includes an anchor member comprising a generally cylindrical member split along the central portion of its length to form an elongate oval.” As discussed above, the Huebsch patent does not disclose such a configuration. Accordingly, claim 20 is allowable over the Huebsch patent. Further, the Examiner has identified no suggestion in the Huebsch patent to modify the disclosure to meet the claim limitation. Claims 21-25 and 27-32 are allowable at least because they depend from claim 20 and the novel features recited.

Claims 20 and 34-38 have been rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Pat. No. 5,284,488 issued to Sideris (the “Sideris” patent). The Sideris patent is entitled “Adjustable devices for the occlusion of cardiac defects” and discloses a device having a distal occluder attached to a string and a proximal occluder connected to the string.

The Examiner considers the Sideris patent to disclose “disk 34 [as] cylindrical with an open center portion or slit.” See Office Action dated January 11, 2006, page 7. The disclosure of the Sideris patent does not meet the limitation recited in the independent claim 20 in that the Sideris patent does not disclose “a generally cylindrical member split along the central portion of its length to form an elongate oval” as recited in claim 20. The Official notice that “any object has some height associated with it which therefore makes disk 34 cylindrical with an open portion or slit” (Office Action dated January 11, 2006, page 7) is misplaced. The Sideris patent provides no guidance to the meaning of “disk.” The Merriam-Webster Online Dictionary defines “disk” as “a thin circular object” (<http://m-w.com/dictionary/disk>). It will be apparent to one skilled in the art that “a thin circular object” is not characterized by a “length.” Therefore, the Sideris patent does not disclose “a generally cylindrical member split along the central portion of its length to form an elongate oval” (*emphasis added*), as recited in claim 20. Accordingly, claim 20 is allowable over the Sideris patent. Further, there is no disclosure in the Sideris patent to modify the disclosure to meet the claim limitation. Claims 34-38 are allowable at least because they depend from claim 20 and the novel features recited.

Claims 13 and 33 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the Huebsch patent in view of U.S. Pat. No. 5,649,959 issued to Hannam et al. (the “Hannam” patent). The Huebsch patent has been described above. The Hannam patent is

entitled "Assembly for sealing a puncture in a vessel" and discloses a bioabsorbable assembly for sealing an incision or puncture in the body of the patient including a first member which is positioned generally along the wall of the blood vessel, duct, body cavity or lumen of the patient and a gelatinous material which is injected into the incision or puncture to seal it.

As discussed above, the Huebsch patent does not meet the claim limitations recited in independent claims 1 and 20, from which claims 13 and 33, respectively, indirectly depend. The Hannam patent does not disclose the missing claim limitations from the Huebsch patent. Therefore, the combination of the Huebsch patent and the Hannam patent does not meet the claim limitations recited in independent claims 1 and 20. Claims 13 and 33 are allowable at least because they depend from claims 1 and 20, respectively, and the novel features recited.

Claims 11 and 14 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the Huebsch patent in view of U.S. Pat. No. 5,776,183 issued to Kanesaka et al. (the "Kanesaka" patent). The Huebsch patent has been described above. The Kanesaka patent is entitled "Expandable stent" and discloses an expandable tubular reinforcing member used for a body lumen, wherein the reinforcing member is basically formed of a plurality of rows of expandable joint members and a plurality of rows of flexible elongated members.

As discussed above, the Huebsch patent does not meet the claim limitations recited in independent claim 1, from which claims 11 and 14 indirectly depend. The Kanesaka patent does not disclose the missing claim limitations from the Huebsch patent. Therefore, the combination of the Huebsch patent and the Kanesaka patent does not meet the claim limitations recited in independent claim 1. Claims 11 and 14 are allowable at least because they depend from claim 1 and the novel features recited.

Claim 26 has been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the Huebsch patent as a matter of design choice. The Examiner considers that "Huebsch teaches all aspects of preceding claims 20-24 [] but fails to disclose wherein said angle  $\theta$  is greater than 0 degrees and less than about 45 degrees."

As discussed above, the Huebsch patent does not meet the claim limitations recited in independent claim 20, from which claim 26 indirectly depends. Furthermore, the Huebsch

patent does not disclose any range of angles between struts 22 and the central portion 18. In fact, the Huebsch patent does not even recite the word "angle." Claim 26 is allowable at least because it depends from claim 1 and the novel features recited.

In view of the above amendment and comments, Applicants believe that all claims are allowable. Applicants submit that no new matter has been added by this Amendment. Early and favorable action is requested.

No fees are believed to be due in connection with this submission, however, the Commissioner is authorized to debit any underpayment or credit any overpayment to Deposit Account 08-0219 to maintain pendency of this application.

Respectfully submitted,



David L. Cavanaugh  
Registration No. 36,476  
Attorney for Applicant

Date: April 11, 2006

Wilmer Cutler Pickering  
Hale and Dorr LLP  
60 State Street  
Boston, MA 02109  
Tel: (617) 526-6036  
Fax: (617) 526-5000